

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27

Case No.

COMPLAINT  
(Personal Injury, Premises  
Liability, negligence)

ORS 21.160  
Filing Fee \$884.00  
Prayer for \$1,442,838.25

## Claim NOT Subject to Mandatory Arbitration

Jury Trial Requested

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

19  
20  
21  
22  
23  
24  
25  
26  
27

23  
24  
25  
26  
27

1 Plaintiff Don Surber followed a sign to the only available dressing room. The dressing room  
2 seat was piled with clothes other customers apparently tried on and left. The floor was littered  
3 with multiple thin sheets of paper, which apparently had been folded into the clothes other  
4 customers tried on. Plaintiff Don Surber was not aware that the sheets of paper were slippery  
5 and while attempting to try on a pair of pants slipped on the paper which and fell to the  
6 ground on tailbone and back which then propelled him into the wall and causing personal  
7 injuries and damages as alleged more fully below.  
8

9 4.

10 The condition of the dressing room was unsafe for use by customers. The unsafe  
11 condition of the dressing room constituted an unreasonably dangerous condition that could  
12 not be encountered with a reasonable degree of safety by persons in Plaintiff Don Surber's  
13 position and which was a substantial factor in causing his fall and injuries.  
14

15 5.

16 At all times material herein Defendant, through its employees knew or in the exercise  
17 of reasonable care should have known that the condition of the dressing room rendered it  
18 unsafe for use by Customer's in Plaintiff's position.  
19

20 6.

21 The manner in which Plaintiff used the dressing room was careful and reasonably  
22 foreseeable.  
23

24 7.

25 Plaintiff Don Surber's fall and Plaintiffs' injuries and damages were caused by  
26 Defendant's negligence and breach of duty to maintain a safe premises for the benefit of its  
27 invitees/customers, in one or more of the following particulars each of which created a

1 foreseeable and unreasonable risk of injury to Plaintiff and which was a substantial factor in  
 2 causing his fall:

- 3 (a) Failing to have the store sufficiently staffed with employees to assist customers  
 4 including Plaintiff Don Surber into the dressing room and ensure it was in a safe  
 5 condition;
- 6 (b) Failing to provide and maintain a reasonably safe premises for business invitees by  
 7 allowing trip/slip and fall hazards to exist in the dressing room;
- 8 (c) Failing to keep the dressing room locked until access could be provided by an  
 9 employee;
- 10 (d) Failing to warn Plaintiff Don Surber that there was paper concealed under clothing  
 11 items on the floor of the changing room and that the clothes/paper were slippery and a  
 12 trip/slip and fall hazard;
- 13 (e) Failing to inspect the dressing room for safety hazards;
- 14 (f) Failing to implement or enforce safety protocols whereby dressing rooms are  
 15 inspected for safety prior to allowing customers access;
- 16 (g) Failing to eliminate the unsafe condition of the dressing room once employees become  
 17 aware or should have become aware of the unsafe condition;
- 18
- 19
- 20

21 8.

22 As a foreseeable, direct and proximate result of his fall, Plaintiff Don Surber sustained  
 23 injuries, including but not limited to a closed compression fracture of third lumbar vertebra, as  
 24 well as injuries to his hip, back and shoulder. Plaintiff Don Surber's injuries are permanent  
 25 and cause him pain, suffering, disability, interference with work obligations and normal  
 26

1 activities of daily living, along with empotinal pain and suffering all to his non-economic  
2 damage of \$1,000,000.

3 9.

4 As a further foreseeable, direct and proximate result of Defendants' negligence and  
5 breach of duty to maintain a safe premises, Plaintiffs incurred past medical expenses in the  
6 approximate sum of \$144,476.34 to date. Plaintiff Don Surber is still receiving treatment and  
7 will incur additional medical expenses in an amount to be plead in an Amended Complaint  
8 and proven at trial.

10 10.

11 As a further foreseeable, direct and proximate result of Defendants' negligence and  
12 breach of duty to maintain a safe premises, Plaintiffs have incurred out of pocket expenses in  
13 an approximate amount of \$419.91, to date. Plaintiffs will incur future out of pocket costs in  
14 an amount to be plead in an Amended Complaint and proven at trial.

16 11.

17 As a further foreseeable, direct and proximate result of Defendants' negligence and  
18 breach of duty to maintain a safe premises, Plaintiff Don Surber will be forced to retire and  
19 will suffer impaired earning capacity in the amount of \$197,942.00.

21 12.

22 As a further foreseeable, direct and proximate result of Defendants' negligence and  
23 breach of duty to maintain a safe premises, Plaintiff Kay Surber has sustained and will  
24 continue to sustain emotional pain, loss of consortium and services of her husband, all to her  
25 non-economic damage in the amount a jury deems fair, but not to exceed \$100,000.00.

26 ///

1 WHEREFORE, Plaintiffs prays for judgment against defendants as follows:

- 2 1. Past Medical Expenses in the approximate sum of \$144,476.34, subject to  
3 amendment at the time of trial;
- 4 2. Future medical and related expenses in an amount to be proven at trial;
- 5 3. Impaired earning capacity in the amount of \$197,942.00;
- 6 4. Non-economic damages for Plaintiff Don Surber in a reasonable sum not to exceed  
7 \$1,000,000.00;
- 8 5. Non-economic for Plaintiff Kay Surber in a reasonable sum not to exceed  
9 \$100,000.00;
- 10 6. Plaintiffs' costs and disbursements incurred herein.
- 11
- 12

13 DATED this 27 day of March, 2020.

14

15 /S/ Mark E. Olmsted  
16 Mark E. Olmsted, OSB No. 924156  
17 E-mail: mark@olmstedlaw.com  
18 Attorney for Plaintiffs  
19 Trial Attorney: Mark E. Olmsted  
20  
21  
22  
23  
24  
25  
26  
27